

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	
HYLAND TRANSIT CORP.	)	File Nos. 506876
	)	027399
Application for a New Business Radio Service- Conventional Station at New York, New York	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 1, 2000**

**Released: March 13, 2000**

By the Commission:

**I. INTRODUCTION**

1. We have before us for consideration an Application for Review filed by the Mobile Radio Cooperative Association (MRCA)<sup>1</sup> and S&S Excavating (S&S) (jointly, the Petitioners).<sup>2</sup> The Petitioners seek review of the denial of their petition for reconsideration by the Chief, Land Mobile Branch (Branch) of the Office of Operations of the Wireless Telecommunications Bureau (Bureau).<sup>3</sup> The Petition for Reconsideration challenges the Bureau's October 17, 1995 action which granted an authorization for Station WPIQ472 to Hyland Transit Corp. (Hyland) to operate on frequency 937.750 MHz.<sup>4</sup> For the reasons stated herein, we deny the Application for Review and affirm the branch's decision.

**II. BACKGROUND**

2. The Bureau granted S&S a license for Business Radio Service-Conventional Station WPGD672 on December 21, 1994. The authorization permitted S&S to operate six mobile units and one control station on the frequency pair 898/937.7500 MHz.<sup>5</sup> On July 21, 1995, Hyland filed an application for a new Business Radio Service-Conventional station at New York City, three miles from S&S's Station WPGD672. On July 28, 1995, the Personal Communications Industry Association (PCIA) received an

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<sup>1</sup>In the proceeding below, Mobile Radio Cooperative Association referred to itself as Mobile Relay Cooperative Association. However, at the time the Application for Review was filed the name Mobile Radio Cooperative Association was used. MRCA will be used to represent this association under both its former and current name.

<sup>2</sup>Mobile Radio Cooperative Association and S&S Excavating Company, Application for Review (filed May 3, 1996) (Application for Review).

<sup>3</sup>Letter from Terry Fishel, Chief, Land Mobile Branch, to Dennis C. Brown, Counsel for Petitioners (April 3, 1996) (Branch Denial). This letter dismissed Petitioners' Petition for Reconsideration and the Motion for Stay.

<sup>4</sup>Mobile Radio Cooperative Association and S&S Excavating Company, Petition for Reconsideration (filed Nov. 13, 1995) (Petition for Reconsideration).

<sup>5</sup>Branch Denial at 1 ¶ 2.

application from which S&S sought to assign station WPGD672 to MRCA.<sup>6</sup> In addition, MRCA sought to modify the license to increase the number of mobile units to seventy and merge the channel into the license for MRCA's existing trunked system station WFP263.<sup>7</sup> PCIA refused to coordinate this application.<sup>8</sup> On October 17, 1995, the Branch granted Hyland's application for the use of twenty-four mobile units, a base station and one control station on the frequency pair 898/937.7500 MHz.

3. On November 13, 1995, Petitioners filed a petition for reconsideration of the Branch's October 17, 1995 grant of Hyland's application.<sup>9</sup> On December 14, 1995, Petitioners filed a motion for stay of the Hyland application grant.<sup>10</sup> On April 3, 1996, the Branch denied the petition for reconsideration and the motion for stay.<sup>11</sup>

4. On May 3, 1996, the Petitioners jointly filed the aforementioned Application for Review of the April 3, 1996 denial of their Petition for Reconsideration.<sup>12</sup> They contend that Hyland should not have been granted a frequency because S&S was the first user and was entitled to exclusive use of the channel for eight months.<sup>13</sup>

### III. DISCUSSION

5. Petitioners request that the Commission determine whether a community repeater, of which S&S was the first user, is entitled to a period of eight months within which to load the channel fully before the channel is made available to other prospective systems.<sup>14</sup> In support of their argument, Petitioners submitted a May 18, 1992 letter regarding another proceeding from a former Chief of the Branch to Motorola regarding 800/900 MHz conventional systems and provisions of Section 90.633 of the Commission's Rules.<sup>15</sup> Petitioners indicate that the 1992 Letter states that "[c]ommunity repeater systems and SMR systems when authorized as the first system on a channel are permitted eight months from the date of grant of the channel in the area to load it before it is available to other prospective

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<sup>6</sup> Letter from Garrie C. Losee, Product Manager for PCIA, to Terry Fishel, Chief, Land Mobile Branch (Dec. 5, 1995)(PCIA Letter).

<sup>7</sup> Branch Denial at 1 ¶ 3.

<sup>8</sup> PCIA Letter.

<sup>9</sup> Petition for Reconsideration at 1.

<sup>10</sup> Mobile Relay Cooperative Association and S&S Excavating Company, Motion for Stay (filed Dec. 14, 1995) (Motion for Stay).

<sup>11</sup> Branch Denial.

<sup>12</sup> Application for Review.

<sup>13</sup> *Id.*

<sup>14</sup> Petition for Reconsideration at 1.

<sup>15</sup> Letter from Terry L. Fishel, Chief, Land Mobile Branch, to Elaine McMannes of Motorola, Inc. (May 18, 1992) (1992 Letter).

systems.”<sup>16</sup> Petitioners also state that, prior to the receipt of MRCA’s application for consent to assignment of S&S’s license to MRCA, but less than eight months after the grant of S&S’s license as the first user of a new community repeater, PCIA coordinated Hyland’s application for a new facility, co-channel to the community repeater.<sup>17</sup> Thus, Petitioners contend that they were entitled to eight months to load the system to seventy units.<sup>18</sup> As discussed below, we disagree.

6. In 1995, Section 90.625(a) of the Commission’s Rules provided that “[w]here an applicant shows that a channel will be loaded to seventy mobile stations, that channel will be made available to that applicant for its exclusive use in the area in which it proposes to operate.”<sup>19</sup> Additionally, Section 90.633 of the Commission’s Rules provided that licensees who loaded a minimum of seventy mobile stations per channel on conventional systems within eight months of license grant were entitled to exclusive use of their channels.<sup>20</sup> Thus, under the Commission’s Part 90 Rules then in effect, a licensee received eight months to load its channel, but only if the licensee showed that it would load the channel to seventy mobiles or loaded the channel to seventy mobiles before another entity was licensed for the channel. To the extent that the 1992 Letter implies a different interpretation, that letter is incorrect. In this matter S&S requested to load six mobile units and one control station on the channel. S&S did not request to load seventy units on the channel to obtain exclusive use. Consequently, although a licensee could receive eight months to load its channel to seventy mobiles to obtain exclusive use of the channel, under the circumstances presented here S&S only requested to load six mobiles. Thus, we conclude that S&S was not entitled to exclusive use when Hyland’s application was filed and granted. In fact, the channel was available for coordination and assignment to other applicants immediately after the grant of the channel to S&S. Therefore, we affirm the Branch’s decision that the grant of the application for Hyland was consistent with our Rules.<sup>21</sup> Accordingly, we deny the Application for Review and uphold the Branch’s dismissal of the petition for reconsideration.

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<sup>16</sup>*Id.*

<sup>17</sup>Petition for Reconsideration at 3. Hyland filed its application on July 21, 1995, seven months after the initial grant to S&S. Hyland’s application, however, was not granted until October 17, 1995, almost ten months after the initial grant to S&S.

<sup>18</sup>*Id.* at 4.

<sup>19</sup>47 C.F.R. § 90.625(a) (1994).

<sup>20</sup>47 C.F.R. § 90.633 (1994).

<sup>21</sup>Branch Denial at 1.

#### **IV. ORDERING CLAUSE**

7. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Sections 1.115, 90.621(a)(2), 90.625(a) and 90.633(b) of the Commission's Rules, 47 C.F.R. §§ 1.115, 90.621(a)(2), 90.625(a), 90.633(b), Mobile Radio Cooperative Association and S&S Excavating's Application for Review filed on May 3, 1996 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary